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MORDECHAI ORIAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA)

CR No. 10-00576-SOM

Plaintiff,

v.

MORDECHAI ORIAN (01),

Defendant.

DEFENDANT ORIAN'S NOTICE OF
APPEAL AND APPEAL AND REQUEST
TO DISTRICT JUDGE TO
RECONSIDER A MATTER
DETERMINED BY THE DISTRICT
JUDGE; DECLARATION OF COUNSEL

(Rule 6 Motion)

TO: THE HONORABLE SUSAN O. MOLLWAY, UNITED STATES
DISTRICT JUDGE

Notice of Appeal

PLEASE TAKE NOTICE that Defendant, Mordechai Orian, through
counsel of record, William J. Kopeny, hereby submits this appeal and request to
the District Court to reconsider a pretrial matter determined by the United States
Magistrate Judge (the appeal), pursuant to 18 U.S.C. Sec. 636(b)(1)(B) and Rule
57.3(b) and 74.1 of the Criminal Local Rules of Practice for the United States
District Court for the District of Hawaii.

Defendant appeals the order of the United States Magistrate Judge entered
on November 23, 2011 denying Defendant's motion for an order unsealing United
States Grand Jury records and the prior oral order of the United States

1 Magistrate Judge, denying that motion, in part. (See Crim.Dkt., Document #
2 330.)

3 Defendant appeals this order for the reasons set forth in the attached
4 Memorandum and Declaration of Counsel.

5 Dated: December 1, 2011

6
7 Respectfully submitted,

8
9 /S/ William J. Kopeny

10 WILLIAM J. KOPENY
11 Counsel for Defendant
12 MORDECHAI ORIAN

13 Memorandum in Support

14 Defendant Orian Moved for an order to unseal the United States Grand
15 Jury transcripts herein based in part on the fact that Government's counsel
16 admitted during the trial proceedings in the related matter of United States v.
17 Sou, et al., Case No. CR 09-345-SOM, making inaccurate statements concerning
18 the law to the Grand Jury in that case, which was indicted during the same
19 period as the indictment and First Superseding Indictment (FSI) in this case.

20 In his moving papers, and subsequent filings (incorporated by this
21 reference) in support of the motion, Defendant Orian showed that: (1) the issue
22 on which Government's counsel erroneously state the law was central to the
23 indictments in both the Sou case and in this case; (2) that issue (the use of
24 recruiting fees) was central to one of the two theories of liability in the FSI in this
25 case; (3) the other critical issue of law in this case, to wit: whether or not an H2A
26 worker would face economic ruin, or loss of family wealth or property by reason
27 of being returned to Thailand prior to the full three years of work the FSI states
28 was promised, as alleged in the FSI contradicts the law of Thailand, which

1 explicitly requires the Thai recruiters, in a highly regulated industry, post a bond
2 with the Thai government, and in the event any worker is returned to Thailand
3 prior to being able or allowed to work for the full term on which the Thai
4 recruitment fee was based, would be entitled to, and receive from the funds on
5 deposit with the Thai government, a refund of that proportionate amount of the
6 fee previously paid.

7 Because these two legal issues – legality of recruitment fees (during the
8 dates specified in the FSI), and the alleged “knowledge” on the part of the
9 defendants that if the workers were returned to Thailand early they would as a
10 matter of fact and a matter of Thai law never face the ruinous economic
11 consequences alleged in the Indictment, Defendants believe that the
12 Government’s presentation to the Grand Jury of necessity misled the Grand Jury
13 on these two questions of U.S. and Thai law, consistent with the Government’s
14 admitted misleading the Sou Grand Jury on one of these issues.

15 The Magistrate Judge only ordered the Government to submit, ex parte, a
16 portion of the Grand Jury transcripts (not including any testimony or remarks of
17 the prosecutor’s remarks beyond the “advice” portion of the proceedings, and
18 allowed the Government to solely determine what would be submitted.

19 It appears the Magistrate Judge may have conducted such a limited review
20 of the very limited material submitted in camera, that even if the Government did
21 mislead the Grand Jury on these critical legal issues, that may not have been
22 apparent to the Magistrate Judge, or the review may have been limited to the
23 question of the legality of the fees, only.

24 Because the requested information is critical to the viability of a defense
25 motion to dismiss the FSI, Defendant’s respectfully request reconsideration of the
26 motion, and request this District Court to Review all of his pleadings submitted
27 heretofore thereon.

28

Declaration of William J. Kopeny

I, William J. Kopeny, say:

1. I am counsel of record for the Defendant herein, Mordechai Orian.
2. I have reviewed the Reporter's Transcripts of the Sou proceedings relevant to Defendant's Rule 6 motion to unseal Grand Jury materials.
3. I also reviewed and submitted an English translation of Thai law which protects foreign Thai workers from precisely the harm the FSI alleges the defendant's knew the Thai workers would face if they were returned to Thailand prior to three years.
4. The FSI contains allegations which are untrue but which the Grand Jurors found to be true concerning Thai law, based on whatever the Government presented to the Grand Jury.
5. In view of the fact that the Government misrepresented the law concerning the legality of recruitment fees in a related case during the same time frame, and in light of the fact that the Grand Jury made a finding that could not be true (i.e., that the defendants knew that if Thai workers were returned to Thailand early, they and their families would face economic ruin), I believe there is a likelihood that in some manner the Government manipulated or misled the Grand Jury in this case on these points of law essential to the return of the Indictment.

Executed this December 1, 2011 at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ William J. Kopeny
